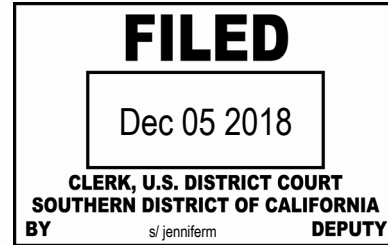


1 Dennis M. Buckovetz
100 Acacia Way
2 Coronado, CA 92118
(619)435-1282
3 Email: DennisBuckovetz@gmail.com



8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

12 NAME OF PLAINTIFF

13 Dennis M. Buckovetz, *Pro Se*

15 vs.

17 NAME OF DEFENDANT

18 U.S. Department of the Navy
19
20

'18CV2736 H KSC

Case No.: **FREEDOM OF
INFORMATION ACT JUDICIAL
REVIEW – REQUEST FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

21
22 1. This complaint relates to the Freedom of Information Act (FOIA), 5
23 U.S.C. § 552. I am seeking judicial review of the U.S. Department of the Navy
24 (DON/Navy) action withholding agency records properly requested and lawfully
25 available under FOIA.
26
27
28

JURISDICTION AND VENUE

2. The United States District Court, Southern District of California, is a proper venue for this case per 5 U.S.C. § 552(a)(4)(B) because I reside in this district. The records are situated in this district.

PARTIES

3. Dennis M. Buckovetz, a person.

4. DON/Navy is the federal Executive Branch agency subject to FOIA.

INTRODUCTION

5. FOIA requires covered federal Executive Branch agencies to provide to "any person" agency records properly requested, except to the extent that such records (or portions thereof) are protected from disclosure by one or more of the nine exemptions or one of three special law enforcement exclusions. 5 U.S.C. § 552

BACKGROUND

6. In early 2015 I submitted FOIA request DON-USMC-2015-002772 to the Marine Corps Recruit Depot (MCRD) San Diego, a subordinate element of the DON, for all emails dated during a certain period that contained the words "coin" or "coins". Exhibit A Responsive emails were provided.

7. On September 3, 2018, I submitted a separate FOIA request DON-USMC-2018-011145 for the same emails. Exhibit B This 2018 request was

1 declared administratively closed because it was a duplicate of the 2015 request.

2 Exhibit C

3
4 8. I appealed. Exhibit D On appeal the administrative closure was
5 affirmed, citing Section 11n of Secretary of the Navy Instruction (SECNAVINST)
6 5720.42F, titled “The Department of the Navy FOIA Program”. Section 11n lists
7 10 reasons for not complying with a FOIA request. Number eight on that list is for
8 duplicative requests from the same requestor. Exhibit E

9
10
11 9. My 2018 FOIA request was initiated as a result of irrefutable evidence
12 that some responsive email records were withheld, either improperly or
13 mistakenly, from the response to my 2015 request. So the 2018 request was done
14 to allow for a comparison with the email records provided in 2015.

15
16
17 10. The Court’s analysis in *Sikes v. United States Dep’t of the Navy*, 896
18 F.3d 1227 (11th Cir. 2018) concludes that there is no basis within FOIA for not
19 fulfilling duplicate FOIA requests. “.....FOIA itself contains nothing that would
20 allow an agency to withhold records simply because it has previously given them
21 to the requester.” *Id*, pg 10 “Moreover, to allow an agency to deny a FOIA
22 request merely because it seeks records previously received would permit the
23 agency to base its FOIA decision on considerations that the Supreme Court has
24 forbidden.” *Id*, pg 12

1 17. Order the Navy to certify per 32 C.F.R. § 701.5(h) that the disclosed
2 email records include all emails that satisfy the search criteria presented in my
3 FOIA.
4

5 18. Award me reasonable costs incurred in this action.

6 19. Grant such other relief as the Court may deem just and proper.
7

8
9 Dated: December 5, 2018

10 Respectfully submitted,
11

12 
13 Dennis M. Buckovetz (*Pro Se*)
14

15 **LIST OF EXHIBITS**

16 **A through E**

17 (pp. 1 – 8)

- 18 A My 2015 FOIA request DON-USMC-2015-002772 (Page 1)
19 B My 2018 FOIA request DON-USMC-2018-011145 (Page 2)
20 C Response dated September 17, 2018, to my FOIA request DON-
21 USMC-2018-011145 w/o enclosures (Pages 3 - 4)
22 D My September 18, 2018, appeal DON-NAVY-2018-011612 (Page 5)
23 E Navy's October 4, 2018, reply to my appeal (Pages 6 – 8)
24
25
26
27
28

Request Details

Status : Assignment Determination Due Date : N/A

0 (Never Started)

Submitted

Evaluation

Assignment

Processing

Closed

| | |
|--|--|
| Tracking Number : DON-USMC-2015-002772 | Submitted Date : 01/23/2015 |
| Requester : Mr. Dennis M. Buckovetz | Last Assigned Date : 02/03/2015 |
| Organization : N/A | Fee Limit : \$200.00 |
| Requester Has Account : Yes | Request Track : Simple |
| Email Address : DennisBuckovetz@gmail.com | Due Date : N/A |
| Phone Number : 619-435-1282 | Assigned To : Marine Corps Recruit Depot Western Recruiting Region |
| Fax Number : N/A | San Diego |
| Address : 100 Acacia Way | Last Assigned By : David P. Foley (Marine Corps Recruiting Command) |
| City : Coronado | |
| State/Province : CA | |
| Zip Code/Postal Code : 92118 | |

Submission Details

Request Handling

| | |
|--|------------------------------|
| Requester Info Available to the Public : | Request Perfected : No |
| Request Track : Simple | Appellate Authority : N/A |
| Fee Category : | Acknowledgement Sent Date : |
| Fee Waiver Requested: Yes | Unusual Circumstances ? : No |
| Fee Waiver Status: Pending Decision | 5 Day Notifications: No |
| Expedited Processing Requested : | Litigation : No |
| Expedited Processing Status : N/A | |

Request Description

| | | |
|--|--------------------------------|--------|
| Short Description : N/A | | |
| This request is for the Marine Corps Recruit Depot, San Diego, CA. | | |
| I request all email messages dated on or after 1 May 2014 that have any of the following email addresses Mark.Tull@usmc.mil, Jim.Gruny@usmc.mil, Michael.Lee@usmc.mil, James.Bierman@usmc.mil, Thomas.W.Spencer@usmc-mccs.org, and John.Ming@usmc.mil on the "From:", "To:", "Cc:", or "Bcc:" lines AND contain the words "coin" or "coins" on the subject line or within the body of the message. | | |
| For any responsive records not released I request a complete list of the responsive records being withheld, what exemptions are being claimed, and a brief explanation of how the exemption applies to the record withheld and why discretionary release is not appropriate. | | |
| Please don't hesitate to contact me at DennisBuckovetz@gmail.com if there are any questions or issues with this request. | | |
| Description Available to the Public : | Has Description Been Modified? | 0/2000 |

Additional Information

| |
|-----------------------------|
| Case # : N/A |
| Name of Local Command : N/A |
| Contract/Sol. # : N/A |

A
I

DON-USMC-2018-011145 Request Details



Submitted



Evaluation



Assignment



Processing



Closed

Contact Information

| | |
|---------------------------------|------------------------------|
| Full Name | Mr. Dennis M Buckovetz |
| Organization | |
| Email Address | DennisBuckovetz@gmail.com |
| Phone Number | 6194351282 |
| Fax Number | |
| Mailing Address Location | United States/US Territories |
| Address Line 1 | 100 Acacia Way |
| Address Line 2 | |
| City | Coronado |
| State/Province | CA |
| Zip Code/Postal Code | 92118 |

Request Information

| | |
|-------------------------------------|--|
| Agency | Marine Corps Recruit Depot Western Recruiting Region San Diego |
| Will Pay Up To | \$200.00 |
| Date Submitted | 09/03/2018 |
| Estimated Date of Completion | 10/02/2018 |
| Fee Category | Other |
| Request Track | Simple |
| Request Phase | Closed |
| Final Disposition | Duplicate Request |

Description

| | |
|--------------------|--|
| Description | I request all email messages dated on or after 1 May 2014 that have any of the following email addresses Mark.Tull@usmc.mil, Jim.Gruny@usmc.mil, Michael.Lee@usmc.mil, James.Bierman@usmc.mil, Thomas.W.Spencer@usmc-mccs.org, and John.Ming@usmc.mil on the "From:", "To:", "Cc:", or "Bcc:" lines AND contain the words "coin" or "coins" on the subject line or within the body of the message. |
|--------------------|--|



UNITED STATES MARINE CORPS
MARINE CORPS RECRUIT DEPOT/WESTERN RECRUITING REGION
1600 HENDERSON AVENUE SUITE 238
SAN DIEGO, CALIFORNIA 92140-5001

5720

1A

SEP 17 2018

Mr. Dennis Buckovetz
100 Acacia Way
Coronado, CA 92118

Dear Mr. Buckovetz:

This letter acknowledges and responds to your September 3, 2018, Freedom of Information Act (FOIA), request seeking all email messages dated on or after 1 May 2014 that have any of the following email addresses Mark.Tull@usmc.mil, Jim.Gruny@usmc.mil, Michael.Lee@usmc.mil, James.Bierman@usmc.mil, Thomas.W.Spencer@usmc-mccs.org, and John.Ming@usmc.mil on the "From:", "To:", "Cc:", or "Bcc:" lines AND contain the words "coin" or "coins" on the subject line or within the body of the message. Your request was received by this office on September 4, 2018 and it is controlled under file number DON-USMC-2018-011145.

Responsive records under file number DON-USMC-2015-002772, enclosure (1) were sent on March 22, 2015, which included a partial referral under file number DON-USMC-2015-003493, enclosure (2) on February 18, 2015. In light of our previous responses, we consider the current request to be a duplicate and will administratively close it.

In view of the above, you may consider this to be an adverse determination that may be appealed. Since you have an account created in FOIAonline website, you may submit an appeal directly within the web-based system. To do this, you would log in to your account, retrieve your original request, and then click on the "Create Appeal" tab in the left-hand column. The basic information from your request will be duplicated for you, and then you can type in the basis of your appeal. If you prefer to use regular mail, you may submit an appeal to the Judge Advocate General of the Navy (Code 14), 1322 Patterson Avenue SE, Suite 3000, Washington Navy Yard, DC 20374-5066. Your appeal, if any, must be postmarked within 90 calendar days from the date of this letter and should include a copy of your initial request, a copy of this letter, and a statement indicating why you believe your appeal should be granted. I recommend that your appeal and its envelope both bear the notation, "Freedom of Information Act Appeal".

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5720

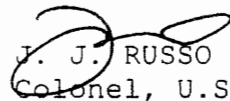
1A

You also have the right to seek assistance and/or dispute resolution services from the Marine Corps FOIA Public Liaison, Ms. Sally Hughes, at hqmcfoia@usmc.mil or (703) 614-4008, and/or the Department of the Navy FOIA Public Liaison, Mr. Christopher Julka, at christopher.a.julka@navy.mil or (703) 697-0031. You may also contact the Office of Government Information Services (OGIS) for assistance and/or dispute resolution at ogis@nara.gov or 1-877-684-6448. For more information online about services provided by OGIS, please visit their website at <https://ogis.archives.gov>.

There are no fees for this request. I am the official responsible for this determination.

Should you have questions about this action, please contact Ms. Cinthia Christopher at (619) 524-8737, via email cynthia.christopher@usmc.mil, or fax at (619) 524-8766. Please reference the file number.

Sincerely,


J. J. RUSSO
Colonel, U.S. Marine Corps
Chief of Staff

Enclosure:

- (1) Copy of FOIA request DON-USMC-2015-002272.
- (2) Copy of FOIA referral DON-USMC-2015-003493.
- (3) Copy of email traffic dtd September 6, 2018.

DON-NAVY-2018-011612 Appeal Details



Submitted



Evaluation



Assignment



Processing



Closed

Contact Information

| | |
|---------------------------------|------------------------------|
| Full Name | Mr. Dennis M Buckovetz |
| Organization | |
| Email Address | DennisBuckovetz@gmail.com |
| Phone Number | 6194351282 |
| Fax Number | |
| Mailing Address Location | United States/US Territories |
| Address Line 1 | 100 Acacia Way |
| Address Line 2 | |
| City | Coronado |
| State/Province | CA |
| Zip Code/Postal Code | 92118 |

Appeal Information

| | |
|-------------------------------------|--------------------|
| Agency | OJAG - 14 |
| Will Pay Up To | \$0.00 |
| Date Submitted | 09/18/2018 |
| Estimated Date of Completion | TBD |
| Fee Category | Other |
| Request Track | |
| Request Phase | Assignment |
| Final Disposition | Affirmed on Appeal |

Basis for Appeal

Basis for Appeal

My request DON-USMC-2018-011145 is meant to duplicate my request DON-USMC-2015-002772 submitted to Marine Corps Recruit Depot, San Diego in 2015. My claim in this appeal is that the responsive records requested by DON-USMC-2018-011145 are being improperly withheld. Attachment 1, Thomas W. Sikes v. United States Department of the Navy, applies. My request DON-USMC-2018-011145 is not meant to duplicate the

50



DEPARTMENT OF THE NAVY
OFFICE OF THE JUDGE ADVOCATE GENERAL
1322 PATTERSON AVENUE SE SUITE 3000
WASHINGTON NAVY YARD DC 20374

IN REPLY REFER TO:
5720
Ser 14/002
October 4, 2018

Mr. Dennis Buckovetz
100 Acacia Way
Coronado, CA 92118
Email to: dennisbuckovetz@gmail.com

SUBJECT: FREEDOM OF INFORMATION ACT (FOIA) REQUEST DON-USMC-2018-011145; FOIA APPEAL DON-NAVY-2018-011612

This letter responds to your FOIA appeal received in our office on September 18, 2018. You appeal a determination by Marine Corps Recruit Depot/Western Recruiting Region (MCRD/WRR), that your underlying FOIA request, DON-USMC-2018-011145, is duplicative of a prior FOIA request you submitted in 2015, DON-USMC-2015-002772.

Your appeal is a request for a final agency determination under the FOIA. For the reasons set forth below, I must deny your appeal.

Your current FOIA request, submitted on September 3, 2018, requests "... all email messages dated on or after 1 May 2014 that have any of the following email addresses Mark.Tull@usmc.mil, Jim.Gruny@usmc.mil, Michael.Lee@usmc.mil, James.Bierman@usmc.mil, Thomas.W.Spencer@usmc-mccs.org, and John.Ming@usmc.mil on the 'From:', 'To:', 'CC:', or 'BCC:' lines AND contain the words 'coin' or 'coins' on the subject line or within the body of the message." Your previous FOIA request, submitted on January 23, 2015, requests the same information using identical language. Furthermore, you state in your current FOIA appeal that "my request DON-USMC-2018-011145 is meant to duplicate my request DON-USMC-2015-002772."

Section 6.3b(8) of Department of Defense Manual 5400.07 defines a duplicative request as "when the FOIA requester asks for the same information requested in a prior request." Section 11n of Secretary of the Navy Instruction (SECNAVINST) 5720.42F states there are ten reasons for not complying with a FOIA request; number eight on that list is for duplicative requests. SECNAVINST 5720.42F further authorizes a duplicative request finding "when a request is duplicative of another request which has already been completed or currently in process from the same requester." Your current request is for

E
6

5720

Ser 14/002

October 4, 2018

“... all emails dated on or after 1 May 2014.” In an email to the MCRD/WRR FOIA Coordinator on September 6, 2018, you clarified that your request was meant to cover the period of May 1, 2014 to February 3, 2015. Your previous request also asked for “... all emails dated on or after 1 May 2014”, and on March 22, 2015, you were sent documents responsive to that request. Thus, your current request covers the same time period as your previous request and “asks for the same information requested in a prior request” which “has already been completed.” Additionally, you stated that your current request is meant to duplicate your previous request.

Any agency faced with a duplicative FOIA request must reassess any previous withholding decisions made within the scope of the duplicative request. Yet, withholding decisions are often the most labor-intensive and complicated aspect of an agency's FOIA response efforts. Thus, after agency employees have already processed a FOIA request and made withholding decisions, requiring the same or yet another agency employee to plow the same ground all over again, while a backlog of requesters remain waiting for attention, is not an efficient use of agency resources. Allowing duplicative requests would potentially allow a small group of FOIA requesters to hold an agency's resources hostage with a constant barrage of FOIA spam in the form of duplicative requests, compelling de novo reassessment of the same withholding decisions *ad infinitum*. Agency resources are not unlimited, and thus allowing requesters to monopolize scarce agency resources in this way-through filing duplicative requests where the records are static-would also disserve the purposes of the FOIA because every minute spent giving de novo reassessment to a duplicative request is a minute not spent processing new requests and disclosing new, previously undisclosed records. *Toensing v. United States*, 890 F. Supp. 2d 121, 140 (D.D.C. 2012).

You have cited *Sikes v. United States Dep't of the Navy*, 896 F.3d 1227 (11th Cir. 2018) as precedent for requiring this agency to allow duplicate FOIA requests. Please be advised that this case is legally binding precedent only within the 11th Circuit. Neither you nor the records in this case are located within that Circuit. Both DoD and Navy FOIA regulations on duplicate FOIA requests disagree with the holding of that case. I am located in the District of Columbia, a location that is the same as the *Toensing* case. I am opting to follow the precedent of that case rather than the *Sikes* case.

For all these reasons, I concur with MCRD/WRR's determination that your current request is duplicative of your previous request, and your appeal is therefore denied.

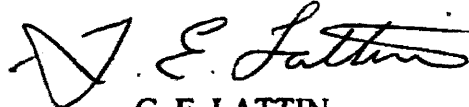
As the Department of the Navy's designated adjudication official for this FOIA appeal, I am responsible for the denial of this appeal. You may seek judicial review of this decision by filing a complaint in an appropriate U.S. District Court. My office represents the U.S. government and is therefore unable to assist you in this process.

5720
Ser 14/002
October 4, 2018

If you would like to seek dispute resolution services, you have the right to contact the Marine Corps FOIA public liaison, Ms. Sally Hughes, at hqmcfoia@usmc.mil or (703) 614-4008, or the Department of the Navy's FOIA public liaison, Mr. Chris Julka, at christopher.a.julka@navy.mil or (703) 697-0031.

If you have further questions or concerns for my office, my point of contact is Major James McKeon, who may be reached at james.mckeon@navy.mil or (202) 685-4596.

Sincerely,

A handwritten signature in black ink, appearing to read "G. E. Lattin". The signature is stylized with a large, sweeping initial "G" and a long, horizontal flourish extending to the right.

G. E. LATTIN
Director
General Litigation Division

Copy to:
MCRD/WRR
HQMC (ARSF)
DON CIO